IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4048 OF 2006

M/s.Manpasant & Ors. ...Petitioners

Versus

Bank of India ...Respondent

Shri N.V.Bandiwadekar for the Petitioners.
Shri S.A.Bhagwat for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 26, 2007.

P.C.:

1. Rule. Advocate for the Respondent waives service. Taken up for hearing forthwith considering the facts and circumstances of the case.

2. The Respondent Bank filed a suit for recovery of a sum of Rs.01,74,832/- together with interest against the Petitioners. The Petitioners filed written statement-cum-counter claim by which the Petitioners claimed a sum of Rs.03,01,867,60 paise against the Respondent. The counter claim was contested by the Respondent by filing written statement. The trial Court decreed the suit filed by the Respondent and passed a money decree against the Petitioners. The trial Court dismissed the counter claim preferred by the Petitioners.

3. Being aggrieved by the decree passed by the

trial Court, the Petitioners preferred an Appeal in the District Court. In the said Appeal, an Application was made at Exhibit 17 praying for amendment of the written statement. According to the case of the Petitioners they had handed over the original passbook of the current account of the Petitioners maintained by the erstwhile the Bank of Karad Limited, Karad Branch, Laxmipuri, Kolhapur to their Advocate. It must be stated here that the Respondent Bank is the successor of the said Bank of Karad Ltd. It was contended in Application for amendment that by amending the written statement, the Petitioners desire to rely upon certain entries made by the Bank of Karad Ltd in the passbook. Therefore, the amendment was sought to paragraph No.5 of the written statement for incorporating a reference to the entries in the said passbook. The said Application was contested by the Respondent. By the impugned order dated 25th April, 2006 the learned Adhoc Additional District Judge, Kolhapur rejected the said Application. The learned Judge held that the Petitioners had an ample opportunity earlier to incorporate the details of the entries in the passbook in their written statement and therefore, the Application was belatedly filed.

4. The Petitioners have filed an affidavit of the second Petitioner for himself and on behalf of the other Petitioners. In paragraph Nos.2 to 4 of the affidavit

it is stated that if the amendment is allowed the Petitioners will not seek an order of remand and the Petitioners desire to recall the witness examined by the Respondent for examining him on the extract of the account maintained the bank of Karad Ltd. It is stated that the Petitioners desire to examine one Shri Lele, Liquidator of the Bank of Karad Ltd. It is also stated that the Petitioner No.2 wants to examine himself on the said account maintained by the bank of Karad Ltd. The learned Advocate for the Petitioners submitted that in view of the said undertaking, the amendment may be allowed and the Petitioners may be permitted to lead evidence before the Appellate Court as stated in the affidavit. The learned Advocate for the Respondent opposed the Petition by pointing out that reliance could have been placed on the passbook issued by the bank of Karad Ltd during the pendency of the suit and that has not been done. He submitted that the passbook is not genuine. He submitted that no interference was called for.

5. I have considered the submissions. The Respondent has raised a doubt about the genuineness of the passbook allegedly issued by the bank of Karad Ltd on which the Petitioners are placing reliance. Perusal of the passbook shows that if the entries made therein are true, it will have some bearing on the claim made by

both the parties. Even if amendment is allowed, the limited evidence can be recorded by the Appellate Court as indicated in the affidavit filed on behalf of the Petitioners and it will not be necessary to pass an order of remand. It is not in dispute between the parties that the Appellate Court has not granted any stay to the execution of the decree. As a result of grant of permission to amend the written statement and grant of permission to lead evidence, the hearing of the Appeal may be delayed. It will be open for the Respondent to execute the decree notwithstanding the pendency of the Appeal.

6. Considering the nature of the amendment, the same deserves to be allowed subject to payment of costs by the Petitioners to the Respondent. The amount of costs is quantified at Rs.5,000/-.

7. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 25th April, 2006 is quashed and set aside and Application made by the Petitioners at Exhibit 17 in Regular Civil Appeal No.173 of 2005 is allowed.

(ii) Amendment shall be carried out within a period

of two weeks from the date of receipt of writ of this order by the Appellate Court.

(iii) After the amendment is carried out, the parties will be entitled to lead additional evidence. It is made clear that under no circumstances the Appellate Court will pass an order of remand. The Petitioners will be permitted to produce the passbook and to examine the Petitioner No.2 as a witness. The Petitioners will be entitled to recall witness examined by the Respondent Bank for further cross-examination. The Petitioners will be also entitled to examine the liquidator of Bank of Karad Ltd. It is made clear that the Petitioners will not be permitted to examine any other witness and examination of the aforesaid witnesses will be limited to the entries in the passbook which will be produced by the Petitioners.

(iv) It will be also open for the Respondent Bank to lead additional evidence.

(v) The Appellate Court will endeavour to decide the Appeal as expeditiously as possible and preferably by the end of the year 2007.

(vi) It is made clear that the decree passed by the trial Court in favour of the Respondent is not stayed and it will be open for the Respondent to execute the decree and to recover the decretal amount from the Petitioners notwithstanding the pendency of the Appeal.

(vii) Writ Petition is partly allowed in above terms.

(viii) The Petitioners are directed to pay costs of Rs.5,000/- to the Respondent within of period of six weeks from today.

(ix) Deposit of the amount of the cost with the Appellate Court will be treated as sufficient compliance with this order.

JUDGE